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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/784,707	02/15/2001	Angelo Bastioli	13929/TBA	3139
38834	7590	04/20/2004	EXAMINER	
WESTERMAN, HATTORI, DANIELS & ADRIAN, LLP			CHANG, VICTOR S	
1250 CONNECTICUT AVENUE, NW			ART UNIT	
SUITE 700			PAPER NUMBER	
WASHINGTON, DC 20036			1771	

DATE MAILED: 04/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/784,707

Applicant(s)

BASTIOLI ET AL.

Examiner

Victor S Chang

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 April 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 08 April 2004. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached NOTE.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-4, 7, 8, 10-32, 39 and 40.Claim(s) withdrawn from consideration: 33-38 and 41-45.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

DANIEL ZIRKER
PRIMARY EXAMINER
GROUP 1900
1700



NOTE

1. The Examiner has carefully considered Applicants' amendments and remarks filed on 4/8/2004. Applicants' amendments to claims 1 and 7, which incorporate elements of cancelled claims 5 and 6, have been entered.
2. The information disclosure statement (Starch Chemistry and Technology, pages 250-253) filed 4/8/2004 fails to comply with 37 CFR 1.97(c) because it lacks the fee set forth in 37 CFR 1.17(p). Additionally, the information disclosure statement filed 4/8/2004 also fails to comply with 37 CFR 1.97(c) because it lacks a statement as specified in 37 CFR 1.97(e). It has been placed in the application file, but the information referred to therein has not been considered.
3. With respect to Applicants' argument that "Altieri teaches away from the claimed invention. There is no suggestion or teaching provided by Altieri which would have motivated one of ordinary skill art to employ a starch having an amylose content less than the 45% by weight required by Altieri" (Remarks, page 14, 4th paragraph), the Examiner notes that while Altieri teaches a biodegradable shaped product comprising an expanded modified flour product preferably having at least 40% by weight amylose content (Abstract), nowhere does Altieri expressly teach that the amylose content must be greater than 45 wt%, and such limitation is also not recited in the independent claim 1 of Altieri's patent (US 5153037), Applicants' argument to the contrary notwithstanding. Finally, the Examiner notes that if less than 45 wt% amylose is the point of novelty,

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which is also clearly absent from the independent claim 1 of the instantly claimed invention.